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ABSTRACT

Since 1980 the Children's Hearings Project (CHP) in Cambridge, Massachusetts, has offered status offenders and their families mediation as an alternative to the courts. This report describes CPH's origins and summarizes the results of an extensive research study conducted during the first 2 years of its operation. The key findings were: (1) mediation is most appropriate for cases involving stubborn and run-away children; (2) mediation introduces a new way of managing conflict between parents and adolescents; (3) mediation helps families learn new forms of dispute resolution despite long entrenched patterns of family conflict; (4) mediation can be adapted to take into account the unequal power of parents and children; (5) volunteer mediators can be trained to handle the complex family dynamics of status offender families; (6) parents and children were positive about the mediators; and (7) volunteer mediators in the United States differed from lay panel members in Scotland. It is argued that the findings point to the viability of dispute resolution techniques for status offenders and their families and could make it possible to divert large numbers of status offenders from the courts while creating alternative, structured setting within which family conflicts could be aired and resolved. Preferably, however, mediation should remain an adjunct to the court process rather than replacing it. (RDN)

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# THE CHILDREN'S HEARINGS PROJECT

## RESEARCH FINDINGS
## A SUMMARY REPORT

1985

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# FOREWORD

With funding from the W.T. Grant Foundation, the Children's Hearings Project participated in a research project which studied the families participating in the Project from November, 1981 to April, 1983 of the demonstration period. The demonstration was funded by grants from the Ford Foundation, the Edna McConnell Clark Foundation, The Robert Sterling Clark Foundation and the Florence V. Burden Foundation.

The Project was sponsored by the Massachusetts Advocacy Center, and its first supervisor was Elizabeth W. Vorenberg, Deputy Director of the Center. Sandra Wixted has been director for the Project since its beginning and worked closely with the research staff during the course of the study. Sally E. Merry, principal investigator, is Professor of Anthropology at Wellesley College. Ann Marie Rocheleau served as researcher and was a full-time member of the Children's Hearings Project staff during the period of the study.

Sponsorship of the Project shifted to Cambridge Family and Children's Service when the program became publicly funded by the Massachusetts Department of Social Services.

For a copy of the full research study, please contact the Children's Hearings Project.
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Since 1980, the Children's Hearings Project in Cambridge, Massachusetts, has offered mediation as an alternative to the court for youths and their families. Although alternative dispute resolution techniques have been in use for over a decade, mediation has mainly been used for dealing with interpersonal, neighborhood and domestic disputes among adults. The Children's Hearings Project and a similar program in New York were the first in the United States to use dispute resolution techniques in parent/child conflicts.

This report describes the origins of the Children's Hearings Project and summarizes the results of an extensive research study conducted during the first two years of its operation. The findings from this study establish the particular benefits of alternative dispute resolution for child/parent conflicts and have important implications for practitioners in the alternative dispute resolution field as well as for policymakers, legal reformers and social scientists.

## ORIGINS

Children who get into trouble because they run away from home, fail to attend school, or consistently defy or disobey their parents are labeled status offenders by the legal system. The handling of status offenders--whose behavior would not be considered criminal if carried out by an adult--has long been a thorny problem for the courts.

Until the early 1970's many such youths were treated as criminals or pre-criminals by the court system and locked up in detention centers. Advocates, arguing that these children suffer from social problems, rather than criminal tendencies, engaged in efforts to move their treatment away from the legal arena. In 1973, Massachusetts became one of the first states to decriminalize status offenses, passing a statute that changed the designation of status offenders to Children in Need of Services.

Throughout the 1970's, the Massachusetts Advocacy Center, which had actively supported this statute, monitored the changes in the treatment of youngsters under the new system. By the late 1970's, the Center had reached the conclusion that the new system was often no different from a delinquency proceeding, and that, in fact, these children had lost some of their due process rights. The Center became interested in introducing and exploring the advantages of a different, non-court model.

In attempting to develop such a model, planners of what was to become the Children's Hearings Project were influenced by court reform movements of this period. By the late 1970's, alternative dispute resolution programs had been introduced in a number of urban centers--e.g., the Urban Court in the Dorchester section of Boston, the Community Boards in San Francisco, and the Neighborhood Justice Centers in Atlanta, Kansas City and Los Angeles.

These programs claimed that the courts are often not the best place to deal with minor disputes among adults, especially where those in conflict.

had a prior relationship. They provided a forum where the underlying issues in disputes between adults could be brought out and addressed; adult family members or neighbors could air their differences in private and reach negotiated agreements outside the hurried and impersonal atmosphere of busy courts. These programs typically emphasized community involvement and trained community volunteers to serve as third party negotiators in the mediation sessions.

During this same period, the need for reform in the juvenile justice system had led to the development of diversion programs for juveniles. Both federal and state support became available for new community-based services to meet the various needs of juvenile offenders. Status offenders in particular became eligible for a wide range of such services. For the most part, however, these services were an adjunct to, rather than a replacement of court proceedings. Alternative dispute resolution techniques were rarely applied to juvenile matters. The few programs specializing in children's cases focused almost exclusively on minor delinquencies, usually where the disputants were the juvenile offender and the victim. Children continued to be brought to court for running away from home, failing to attend school, or defying their parents.

For a model of an informal juvenile justice program which replaced the court in almost all instances, the planners of the Children's Hearings Project turned to the Scottish Children's Hearings System. In a sweeping reform of its juvenile justice system, Scotland, in 1968, had replaced its juvenile courts with panels of volunteers. These panels were charged with the responsibility of meeting with youthful offenders, their parents, social workers and school representatives to determine solutions that would be in the best interest of the child and the community. Often referred to as the Children's Panels, the Scottish system encourages participation by family members in settings less formal than court and recognizes the positive role volunteers can assume.

Although significant aspects of the panel system could not be replicated, notably the requirement that families attend the sessions and the fact that panel members have dispositional powers, the Scottish experience showed that an alternative non-court mechanism using community volunteers could be developed to meet the needs of troubled youths and their families. In choosing the name, "Children's Hearings Project", the planning group at the Massachusetts Advocacy Center signaled its intent to incorporate aspects of the Scottish Children's Hearings System into a new American model.

## RESEARCH STUDY

From the beginning of the Children's Hearings Project (CHP), staff were aware of the importance of documenting and evaluating this important social experiment. If the model proved effective, it would have potentially widespread applicability. With support from the W.T. Grant Foundation,

the CHP commissioned a research study designed both to provide ongoing feedback to the Project staff and to produce a qualitative evaluation of the mediation process that would be useful to policymakers and practitioners. In particular, the study sought answers to the following questions:

RESEARCH QUESTIONS

- For what kinds of status offender cases is mediation most appropriate?
- What is the unique contribution mediation can make to managing family conflict?
- What impact does mediation have on the problems of status offender families?
- Can a brief process such as mediation have an impact on long-entrenched patterns of conflict?
- Does the process change the way families handle conflict?
- Can children make their voices heard and receive fair treatment in an informal process dominated by adults?
- Can volunteer mediators from the community handle the complex emotional issues involved in family conflict?

The research focused on the families of 51 young people who went through mediation during an eighteen month period. The researchers studied the families' experiences in court, in mediation, and interviewed them about the experience and their family situation one month and several months after the mediation process. The research sample consisted of most of the families participating in mediation during the period of the study. Several Spanish-speaking and Portuguese-speaking families could not be included because the researcher was not proficient in their languages. Four families elected not to participate in the study.

For each family, the researcher collected and coded intake information from the court and Children's Hearings Project, observed the way the case was handed in court, and observed the mediation sessions. Observations of each mediation session were recorded on a detailed instrument, evaluating the nature of the mediators' and the family members' participation and activity. One month after mediation the researcher interviewed all of the family members who could be contacted (49 children, 48 mothers and 17 fathers). Six to nine months later, follow-up interviews were conducted with a total of 44 family members.

For comparative purposes, the researcher reviewed the 1980 census data on the demographic characteristics of families in Cambridge and Somerville, the two home communities of most participating families. She also read

and coded the court records of a sample of the CHINS cases not referred to mediation by the two participating courts during the period of the study, and a sample of the court and Project records on the families that were referred to mediation but for one of several reasons did not participate.

The study included an examination of the volunteer mediators: who they were, how they perceived the families in mediation, and how they evaluated the mediation process as a techinique for settling cases. Detailed information on the Scottish Children's Hearings System provided comparative data on the role of the volunteer mediator.* Observations of the judges' handling of status offenders in court enabled a comparison between court processing of cases and mediation.

FAMILY CHARACTERISTICS

Most of the families studied were white and native to the Boston area. Most, 78%, were currently living in either Cambridge or Somerville, the site of the original two courts which participated in the Project. Seventy percent were Catholic.

- Slightly over half (59%) of the young people were female. The average age was 14 years old, with a range of 7 to 17.
- Most of these children (61%) lived in single parent households, usually with their mothers.
- Over two-thirds had two or more siblings. They were more likely to be middle or youngest child rather than the oldest.
- Mothers were 37 years old, on the average, and typically began their families young, when they were in their late teens or early twenties.
- About two-thirds of the mothers were high school graduates; and only one-fifth of the mothers and fathers did not go beyond the ninth grade. Very few were college graduates.
- The median family income was $15,500, but the range was wide--from $4000 to over $50,000. Half were earning under $14,000, well below the median family income for Cambridge and Somerville, suggesting that financial pressures were significant in many, but not all of these families.
- Most of the families were supported by the work of one or both parents. Almost half (47%) of the mothers worked full time, and only one third

*A three-year study of the Scottish Children's Hearings System provided a basis for drawing these comparisons. See Martin, Murray, & Fox, Children Out of Court (Edinburgh, Scotland: Scottish Academic Press, 1981). The planners of the program had also visited Scotland to observe the system.

did not work at all. The most common occupation for the mothers was clerical work; for the fathers it was skilled and semi-skilled manual work.

## COURT BACKGROUND

Most of the cases that came to mediation during the period of the study were referred to the CHP just after beginning the court process. The mediated cases fell into three types: stubborn children (43%), runaways (33%), and truants (24%). Only 9 (18%) of these cases came to mediation without the involvement of the court. The court was not always the first resort for these problems. One-third of the families had already tried counseling, and 28% had sought advice from a professional or relative.

During the period of the study the two participating courts referred 43% of their CHINS cases to the CHP. Half of these cases were mediated at CHP.

## KEY FINDINGS

1. Mediation is most appropriate for cases involving stubborn and runaway children.

The CHP caseload, with 43% stubborn children, 33% runaway, and only 24% truant children, disproportionally included stubborn and runaway cases. Judges were most likely to refer cases to mediation when they involved issues of the child's social life, curfews, participation in chores at home, and internal family conflicts. Truancy problems, particularly when they did not involve significant family conflict, were least likely to be referred or to produce marked improvements in family functioning through mediation. Cases filed in court by parents were far more likely to be mediated than those filed by the school. In three-quarters of the cases which were mediated, the parents had initiated the court action by filing a CHINS application. Family members were most likely to report improved communication when the children were 14 or younger, male, and stubborn or runaway, and least likely to report this improvement when the child was over 14, female, and truant.

A comparison of the social and economic situations of the families who participated in mediation revealed some significant differences from those who did not. 69% of the mediated mothers were working in comparison to only 52% of those who did not end up in mediation. The mediated families had a mean income of $15,000, in contrast to $10,000 for those choosing not to mediate. In sum, the families who participated were the slightly more affluent, working-mother families in which the parents had already gone to court with the problem.

2. Mediation introduces a new way of managing conflict between parents and adolescent children.

Mediation is a process of structured negotiation. By discussing and developing guidelines for behavior which family members can agree on, they experience a way of dealing with family conflict which can be applied to future problems.

The Mediation Process: The mediation process observed by the researcher consisted of a series of "public" or "joint sessions" with all family members; "private sessions" with individuals, and "recesses" of the volunteer mediators alone to discuss their approaches and strategies. In general, the observations revealed a significant difference in behavior and in content between joint and private sessions. Family members were more likely to be angry and less likely to be cooperative in joint than private sessions, but more likely to offer suggestions in private than joint sessions. During the initial joint session, mediators tried to get the families to define the problem and name the issues. The goal was for the mediators to gain an understanding of the areas of conflict and hear each person's version of the situation which had brought them to mediation. Because children were reluctant to open up in front of their parents, and because some parents used this time to complain about the child's behavior, this session was usually kept brief.

The mediator team had at least a short recess after every joint or private session to plan for the next session and to mark the transition. After the first joint session and recess, the mediators held a sequence of private sessions, alternating with the child and the parent. The mediators almost always held the first private session with the child, as a way of demonstrating early on in the process that mediation could include him or her as an equal participant.

In the initial set of private sessions, the mediators asked questions directed at learning more about the situation and issues that emerged in the joint session; in particular they tried to clarify those issues where conflicts existed and to see what each person hoped to get from the mediation and what each was willing to give to the process. The later set of private sessions focused on identifying the negotiable issues more specifically and moving towards settlement. The mediators began developing agreement points based on what family members said they wanted and would agree to do. All agreement points were then checked with all the family members.

The mediation ended with a joint session of all the parties. In 84% of the cases an agreement had been reached. The mediators played a significant role in making suggestions about the specific arrangements to be included in the agreements: the researcher's observations indicated that almost half of the ideas in the agreement had been brought up by the mediators.

This role, however, was not fully recognized by the families. When the families were asked about the origin of the agreement points one month after the mediation session, almost all located the source of ideas within the family and did not think that the mediators had put pressure on anyone to accept any part of the agreement.

The family members' views that they had constructed their own agreement probably reflect their central role in defining the issues to be mediated. In most of the mediation sessions observed, the issues defined by the family served as the basis for the ensuing discussions and agreement. A comparison of the issues raised at intake and those included in the final agreement showed they had not changed significantly. At the same time, mediators tended to eliminate certain issues. They particularly side-stepped issues which were too emotionally complex for mediation, such as a serious loss in the family, resentments toward estranged spouses, or those which were beyond the power of the mediation session to affect, such as a lack of money, overcrowded housing, or the very significant strains on time and energy of the single working mother.

The dominant strategy employed by mediators in most mediation sessions was to focus in on specific areas of conflict and to create guidelines for behavior in this area which both parents and children would accept. This sometimes meant reframing a discussion. For example, restrictions on friends is an area about which adolescents are generally unwilling to make agreements, while negotiations about curfews are more fruitful. General grievances about attitudes and style of life were replaced by rules or guidelines for behavior and referrals to counseling or further mediation. Overall, the information gathered suggest that the families were defining the problems, and the mediators were narrowing and focusing on those areas which they thought would be susceptible to the kinds of negotiation mediation can offer. Complaints were converted to guidelines for living together.

3. Mediation helps families learn new forms of dispute resolution despite long entrenched patterns of family conflict.

A primary initial concern was whether the mediation process would lead to agreements that could be successfully carried out by the participating families. The research reveals that half the agreements were substantially followed. Family members were more often enthusiastic about the process than likely to report that specific problems were settled; 90% thought it was basically a good process, and 83% were satisfied with their experience at the Project.

The interviews suggest that the major contribution mediation makes to family conflicts is not in resolving a specific conflict, but in reframing the way the family members think about their problem and in restructuring patterns of handling conflict. In mediation, participants are exposed to a form of dispute management--negotiation, role-bargaining, and contractual

agreement. Even though their immediate issues are not necessarily resolved, participants learn about and experiment with a way of managing conflict that is potentially useful.

After mediation, most families recognized that the problem that brought them to mediation was a family problem, not simply the child's problem. The follow-up interviews reveal a shift from aggressive, confrontational modes of handling conflict--arguing, fighting, punishing--to negotiation and avoidance. Over half (54%) of the family members said they had changed the way they handled conflict. Seventy percent of the family members said that there was less arguing and fighting after the mediation. Six to nine months later two-thirds continued to report less arguing and fighting, but only about 20% could attribute the improved family situation to any specific agreement point.

a. Mediation produces agreements family members see as fair and balanced.

Interviews conducted after the mediation process was completed indicated that agreements were generally perceived as fair by both children and parents: 84% of the children, 93% of the mothers and 100% of the fathers said that they thought their agreement was fair. When asked why they signed the agreement, 65% said they had done so for reasons indicating that they were satisfied with it, and only 4% signed because they expected to go back to court if they did not. Almost two-thirds (61%) said that the agreement helped the overall family situation.

b. Mediation helps family members to understand one another's actions in new ways.

Both parents and children reported learning new things about how the other felt and gaining a better understanding of the other's point of view. Of all respondents, 41% reported learning something new about the other's feelings--35% of the children and 45% of parents. Fifty-nine percent said that they better understood the other's point of view: 69% of the children and 52% of the parents. This new learning often contributed to reframing the problem and changing patterns of handling conflict.

4. The mediation process can be adapted to take into account the unequal power of parents and children.

As a child advocacy agency with a commitment to children's rights, the Massachusetts Advocacy Center was concerned with whether mediation among "unequals" would produce equitable results. The research indicates that the structured mediation process used at the Children's Hearings Project allowed children substantial participation in the process and produced agreements that both children and parents described as fair and balanced.

The extensive use of private sessions was very important in giving the

children participation in the process. This difference was especially marked in the behavior of the child. Children were more attentive, interested and cooperative in private session. They were much more likely to be withdrawn, silent, not interested, or express opposition in joint sessions, and more likely to ask questions, make suggestions, elaborate and explain, and feel comfortable in private sessions. Thus, the private sessions were crucial to involving children in the process and in allowing them to bring up issues which concerned them. The children felt that the mediations treated them fairly and that the agreements were balanced. Agreements were also generally perceived to contain responsibilities for both parents and children: 75% of the children, 84% of the mothers and all the fathers felt that the agreements were balanced. When asked one month after mediation if the mediators were for or against them, half of the family members said they were neutral and one-third that they were "for all of us." Only 9% thought that the mediators assigned blame to either party.

5. Volunteer mediators can be trained to handle the complex family dynamics of status offender families.

When the CHP opened its doors, experts in the mediation field questioned whether community volunteers could handle the complex, emotional issues involved in families of status offender youths. Recognizing this concern, the CHP placed an emphasis on finding volunteers who had experience in handling children and family matters, whether at home, at work, or in the community. This emphasis distinguished this project from other mediation programs handling primarily adults. The project also sought volunteers who represented a cross-section of the community and who had the personal qualities to be good mediators. Volunteers were initially screened either over the telephone or in person. During follow-up interviews they were given a full description of the program, asked about their interest in mediation, and told about the requirements to attend training and make a one-year commitment to mediate.

As in many mediation programs, the training combined presentations on mediation theory and technique along with extensive practice through role-playing. Two-thirds of the training period was used for role-plays incorporating a range of status offender situations. The volunteers took turns acting as mediators, family members and observers. In addition, because many people might not be acquainted with the concept of status offenses or with the juvenile court, the CHP training included presentations on the background and philosophy of the project, a brief history of the juvenile court, the status offender process in court and its relation to the educational and social service systems. Each trainee was also required to observe juvenile court sessions.

Although the first pool of volunteers was representative of the community due to the vigorous recruitment efforts by the Children's Hearings Project

staff, the ten volunteers who were called upon most often to mediate sessions reveals a fairly homogeneous group, all white, all but one with a college degree, and eight with some advanced education. Half had children. Their incomes fell mostly in the range of $10,000 to $30,000. Seven of the ten had backgrounds in providing or administering social and educational services, two in law and one in mediation. They were a highly educated, but not particularly affluent group, roughly similar in age to the parents of the families going through mediation.

6. Parents and children were positive about the mediators, perceiving them as neutral, helpful and easily comprehensible.

Both the researcher's observations and the interviews with family members indicated the effectiveness of most of the volunteer mediators in achieving the neutral stance of a helpful and interested third party. Observations of the sessions indicated that the mediators spent most of their time gathering and clarifying information.* They were typically encouraging and non-directive, sympathetic, clear in speaking, positive in their body language, and rarely silent. They rarely were interrogating, demanding, sarcastic or contemptuous, blaming of parent or child, shocked or indignant, threatening, interrupting, or likely to use negative body language.

Joint and private sessions differed in a few interesting ways. Mediators were more likely to refer to positive aspects of the child in the private session; they were more likely to advise parents how to handle children and children how to handle their parents in the private sessions of each, and they were more likely to explore options and suggest counseling, particularly to children, in private sessions. These data are consistent with other observations that joint and private sessions were quite different in quality, with joint sessions more devoted to the arguments between parents and children and private sessions to developing specific proposals for dealing with those arguments.

7. Volunteer mediators in the United States differed from lay panel members in Scotland.

To further clarify the role and style of mediators, the study compared the behavior of mediators to American juvenile judges and to citizen panel members in Scotland. The behavior of the CHP mediators was found to be significantly different from both of these comparison groups. Direct observation of the handling of status offenders in court revealed the judges making frequent authoritative statements about what a child or family must or should do and about what society expects of its members.

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*Researchers collaborated with the authors of the comprehensive study of the Scottish system and where appropriate used the same criteria in assessing the styles of the CHP mediators in comparison with the Scottish panel members.

This was particularly marked when the judge was dealing with a young person who had refused to follow earlier recommendations and suggestions of the court. At this point, it was not uncommon for judges to issue threats regarding the painful consequences that could ensue if certain behaviors were not corrected.

A review of the literature on the Scottish Children's Hearings System indicated that the panel members adopted a style during the hearings that resembled the authoritative behavior of judges with strong warnings to improve behavior. Although Scottish panel members, like the CHP mediators, were citizen volunteers, they were similar to judges in having dispositional power over the cases. They were much more likely to exhort the young people to improve their behavior than the CHP mediators.

CHP mediators, on the other hand, as participants in a voluntary process, were much less authoritative in tone or behavior. They sought to build on the motivations and interests which they could uncover in the sessions, especially the private sessions, and use these to make suggestions for possible settlements. As one mother described the process afterwards: "It's like a board of people who have been trained, who listen to both of you and try to bring it together and compromise. They did not take my authority away."

## CONCLUSIONS AND IMPLICATIONS

The major findings from this research study point to the viability of dispute resolution techniques for status offenders and their families. Mediation appears to be useful both in the short-term resolution of specific conflicts and in longer-range changes in the way family members approach new conflicts.

The documentation of satisfactory outcomes from mediation has important and potentially widespread implications. Advocates and legal reformers in most states remain dissatisfied with the juvenile court's handling of status offenders. Court officials too remain frustrated with the limited options available to them. Even where these offenses have been decriminalized, court intervention often seems to escalate rather than alleviate family tensions. The findings from this research study raise the possibility of diverting large numbers of status offender cases from the court. The widespread availability of mediation programs would create an alternative, structured setting within which family conflicts could be aired and resolved.

Complicated issues remain, however, as to the legal status of mediation and its place within the overall judicial system. The comparison to the Scottish Hearings System suggests the extent to which mediation is shaped by its mandate and its institutional framework. When the process replaces the functions of the court, as in Scotland, it seems to replicate its

operations. Panel members adopt a kind of admonishing behavior, which is more similar to that of judges than to the volunteer mediators observed in the study of the Children's Hearings Project.

On the other hand, when mediation remains an adjunct to, rather than a replacement of the court process, the court retains the power over the disposition of these cases. Successful mediation is not a guarantee of dismissal. Thus far, the two states with pioneer mediation programs for status offenders have set up different procedures for the final disposition of these cases.

In Massachusetts, the referral to the Children's Hearings Project, and even the successful completion of mediation, does not result in automatic dismissal of the case. Most families were required to return to court to report on their progress despite efforts of the CHP staff to change the practice so that referred families with successful mediations did not have to return to court. Some judges are unwilling to dismiss a case if those involved indicate any uncertainty as to the long-range outcomes.

In New York, the referral to mediation automatically triggers an "adjournment in contemplation of dismissal." If a satisfactory mediation agreement is reached, the case is automatically dismissed. This would seem to hold promising possibilities for preserving the special status of mediation, while also diverting cases permanently from the courts. One further possibility is to increase the availability of mediation by requiring courts to introduce the mediation alternative before families proceed with the court process. The decision to follow mediation would remain with the family. This would require increased resources and in most jurisdictions, legislation.

After two years' experience as a demonstration project, the CHP started receiving support from the Massachusetts Department of Social Services. This state agency, responsible for the services needed by status offender families, saw mediation as a valuable, family centered service and has made the service available state-wide. This holds implications for other states on how mediation can be integrated with other social services available to these families. It also raises the possibility of mediation being applied to a wider variety of family conflict situations--for instance, cases involving child custody disputes, or children in foster care, or families trying to reverse patterns of abuse and neglect.

At a time when resources for troubled families are limited and shrinking, the successful use of community volunteers at the Children's Hearings Project is encouraging. Their ability to learn the skills and art of negotiation, and to practice it consistently with high satisfaction from the families, is strong reason to consider the wider use of volunteers in the mediation of family conflict.